TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1905.

No. 230.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED JUNE 20, 1904.

(19,399.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 14, 1904.

a Pleas in the circuit court of the United States for the southern district of Iowa, central division, at a term thereof begun and holden in the city of Des Moines, in said district, on the — day of November, 1903, before the Hon. Smith McPherson, one of the judges of said court presiding.

1 Be it remembered that heretofore, to-wit:—on the 12th day of March 1903, there was filed in the clerk's office of said court for said district, at Des Moines, Iowa by the Greenwich Insurance Company of New York, *et al.* a bill of complaint against Byrel F. Carroll, auditor of the State of Iowa, which said bill of complaint is in words and figures following, to-wit;—

In equity.

To the honorable the judges of the circuit court of the United States for the southern district of Iowa, central division:

THE GREENWICH INSURANCE COMPANY OF NEW YORK, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
The Insurance Company of North America, of Philadelphia, a Corporation Organized and Existing under the Laws of the State of Pennsylvania, Having its Principal Place of Business in the City of Philadelphia, and a Citizen of Pennsylvania;
The Hanover Fire Insurance Company of New York, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
National Fire Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;
Orient Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;
British-American Insurance Company of New York, Organ-
2 ized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of the State of New York;
Manchester Assurance Company of Manchester, England, a Corporation Organized and Existing under the Laws of Great Britian, Having its Principal Place of Business in the City of Manchester, and a Citizen of Great Britian;
Sun Insurance Office of London, a Corporation Organized and

Existing under the Laws of Great Britian, Having its Principal Place of Business in the City of London, and a Citizen of Great Britian;

London & Lancashire Fire Insurance Company, a Corporation Organized and Existing under the Laws of Great Britian, Having its Principal Place of Business in the City of London, and a Citizen of Great Britian;

Western Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

British American Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

Suing on Their Own Behalf and on Behalf of All Other Fire Insurance Companies Similarly Situated Who May Come in and Contribute to the Expenses of This Suit, Bring This Their Bill, Complainants,

against

BYREL F. CARROLL, Auditor of State of the State of Iowa, a Citizen of the State of Iowa, Defendant.

And thereupon your orators complain, and say:

I. That each of your orators is a corporation created, organized and existing, and having its principal place of business, as set forth in the title of this, their bill, and is a citizen of the State or the country therein stated. That the defendant Byrell F. Carroll is, and since the 1st day of January, 1903, has been auditor of State of the State of Iowa, and is a citizen of the State of Iowa.

The amount in controversy in this suit between each of your orators, on the one side, and the defendant, on the other, exceeds two thousand dollars ($2000.00) over and above interest and costs.

3 II. Each of your orators are now, and during all the time hereinafter alleged, have been possessed of at least two hundred thousand dollars ($200,000.00) of actual paid up capital, exclusive of any assets deposited in other States and Territories for the special benefit or security of the insurance therein.

Many years ago, being desirous of transacting the business of insurance in the State of Iowa, and under, in accordance with, and in obedience to the laws of the said State, your orators made application, in due form, to be permitted to do business in the State of Iowa, and filed with the auditor of state a written instrument duly signed and sealed authorizing said auditor to acknowledge service of notice or process for and in behalf of such company in this State, and consenting that service of notice or process be made upon the auditor of State, and filed with the auditor a certified copy of its charter, articles of incorporation, or deed of settlement, together

with a statement, under oath of the principal officer of said corporation, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this State, and a copy of the last annual report made under the laws of the State or country by which such company was incorporated, and did all and singular the acts, and complied with all the requirements of the State of Iowa, and paid all the fees required by law to entitled it to do business in the State of Iowa.

That thereupon, and upon a day which your orators are not able at this time to particularly state, the auditor of state issued to it a certificate that it had fully complied with the requirements of law and had become entitled to do business in the State of Iowa.

4 That thereafter it paid annually into the State treasury, as taxes, all sums required by law and all fees required of it to comply fully with the requirements of law, and kept its capital secure and its investments unimpaired; and thereupon on the first day of March annually, the auditor of State issued to it his certificate certifying that it had fully complied with the requirements of law and was entitled to do business in the State of Iowa.

That prior to the 1st day of March, 1903, each of your orators, having carried on its business for many years in the State of Iowa as aforesaid, and having annually paid into the treasury of the State of Iowa large sums of money as taxes for the privilege of doing business in the State of Iowa, and having complied with all the requirements of the laws of the State of Iowa, did, on or about the month of February, pay into the treasury of the State of Iowa large sums of money, and did all and singular the things required of it to entitled it to continue to do business in the said State, and on or about the 1st day of March, 1903, the auditor of state of the State of Iowa issued to it the proper certificate setting forth that it had complied with the insurance law of this State and was authorized to continue the business of fire insurance therein for the current year; and each of your orators is desirous of continuing in the business of fire insurance in the State of Iowa, and is ready, able and willing to comply with each and all of the requirements of law entitling it to do business in the said State.

III. That each of your orators has established and maintained extensive and expensive agencies in the State of Iowa for the transaction of the business of fire insurance, and has built up and maintained an extensive business in fire insurance therein, and has now

5 outstanding in the State of Iowa a large number of policies insuring property in the State of Iowa, and owned by the citizens thereof, aggregating in value large sums of money, and has adjusted and paid large sums of money for property insured and destroyed by fire.

IV. There are many insurance companies, not less than eighty-five in number, incorporated under the laws of States other than the State of Iowa and of foreign countries, which have been for many

years last past and still are engaged in insuring property in this State from loss by fire, each of which, when it began business therein, complied with the requirement of the statutes thereof in all respects and were entitled to, and received, from the auditor of State of the State of Iowa, his certificate to the effect that they were authorized to carry on said business. During all of that time, each of said companies has paid annually large sums of money to the treasurer of state of the State of Iowa, as required by the statutes of the said State; and, desiring to continue its said business, proposes to pay such sums as are required to be paid for such privilege and make such showing of its present condition as will demonstrate its financial competency and comply in all respects with the laws of the State of Iowa; and all of said companies, by reason of their compliance with the statutes as aforesaid, are and will be entitled to carry on such business in this State.

By reason of their great number, it is impracticable for them to join in this, your orators' bill, and they, as well as your orators will be subjected to a multiplicity of suits if each is compelled to exhibit its bill on its own behalf complaining of the matters in respect whereof relief is herein prayed.

6 V. By section 1754 of the Code of Iowa, it is provided that "It shall be unlawful for two or more fire insurance companies doing business in this State, or for the officers, agents or employés of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amounts of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this State, and any such company, officer, agent or employé violating this provision shall be guilty of a misdemeanor." It is further provided by said section that upon the violation thereof a heavy penalty and fine shall be imposed.

By section 1755 of the Code of Iowa, it is made the duty of the auditor of state to summon before him for examination, under oath, any officer, agent or employé of any such company, suspected of violating any of the provisions of section 1754; and upon complaint being made in writing by two or more residents of the State charging such company, under oath, with violating the provisions of said section, it is made his duty to summon before him any officer, agent or employé of such company, and if upon examination he shall determine that such company is guilty of a violation of any of the provisions of said section, or if any such officer, agent or employé, being duly summoned, shall fail to appear, to issue an order revoking the authority of any such company to transact business within this State and providing that they shall not thereafter be permitted to do business in the State at any time within one year therefrom.

VI. Many years ago, fire insurance companies in this and other commercial countries began to collect and preserve full, careful and accurate accounts of fires, their cause, origin, and all other attendant circumstances, and to subject the mass of

7

data to analysis and classification for the purpose and with the result of ascertaining with a reasonable degree of certainty what was the general average of fires and the losses arising therefrom with the different classes of risks, whereby it became possible to ascertain, and it was ascertained, what was the real, true, and fair value of risks taken and assumed by parties who insure property against losses by fire. In doing business in the State of Iowa, your orators and other fire insurance companies are confronted with new and varying conditions, all of which affect the value of risks of fire insurance, and an examination of these conditions, relating to the method of constructing buildings, the material of which they are composed, their location and consequent exposure to fire from adjacent properties, the kind of business carried on in said buildings the extent, nature and kind of fire protection of the various towns and cities of the State, and an almost infinite variety of conditions bearing upon the probability of loss by fire, is necessary to the end that it may be ascertained what is the real, true and fair value of risks of fire insurance to be taken and assumed by your orators upon property in this State. It is essential that they be permitted to avail themselves, not only of their own experience, but of the experience of other fire insurance companies, and that all data obtainable as to the cause, origin, and all the circumstances connected with fires under the varying circumstances by which they were surrounded, be gathered together in one mass and subjected to scientific analysis and classification so that it may be ascertained with a reasonable degree of certainty what is the general average of fires, and the extent of losses therefrom, arising out of certain classes of
8 risks, and thereby the real, true and fair value of such risks definitely and scientifically ascertained.

That in order to ascertain the true and equitable rates to be charged for the different classes of risks in insurance, it is necessary for your orators, and the other fire insurance companies doing business in Iowa, to combine their experiences in the manner aforesaid, and to deduce therefrom the just and true value of the several classes of risks; and your orators, and those for whom they sue, are desirous, when, as the result of their combined experiences, the true value of risks are ascertained, to charge such sum for the various classes of risks as shall represent and shall be the real, true and fair value of the risks taken and assumed by them.

VII. Under the law above referred to, each of your orators, in its endeavor to ascertain the fair value of the risks of insurance, is compelled to employ some person to ascertain from such experience as is to him obtainable, the fair and just value of the risks to be by it assumed; and owing to the limited extent of experience of each of your orators, a much less accurate rate can be thus ascertained than would be a rate drawn from the combined experience of all of your orators and the various companies doing business in Iowa. Then, too, the expense to each of your orators of employing a person to ascertain and determine the value of the risk to be assumed

by it is greatly increased where each of your orators is compelled to employ such person from what it would be if the data obtained from their combined experience could be placed in the hands of some person employed by all for the purpose of ascertaining what would be the just and equitable value of the various classes of risks to be assumed by them.

VIII. An observance of the provisions of section 1754 of the
9 Code greatly hinders, and in truth makes it practically impossible, for your orators to combine their experiences and to subject their combined experience to an analysis and classification by some person employed for the purpose of ascertaining what is the just and true value of risks of insurance; notwithstanding which, if they shall attempt to so combine their experiences and employ some person to ascertain therefrom the reasonable, just and equitable cost of risks of insurance, they charge, upon information and belief, that the defendant will proceed to carry out the provisions of the sections of the code of Iowa aforesaid, and will summon before him your orators and the officers and agents thereof, and will proceed to revoke their authority to do business in the State of Iowa, and will not thereafter permit your orators to do business in the State of Iowa, all to their great and irreparable injury.

IX. Your orators, for themselves and for others similarly situated, complain of the provisions of the code of Iowa hereinbefore referred to for the reason that the said provisions, and the several sections immediately following the same and which appertain to the method of procedure for the enforcement of the provisions of sections 1754 and 1755 — for the reason that said sections of the code of Iowa violate and infringe the provisions of the constitution of the State of Iowa and the Constitution of the United States, in the following particulars, to-wit.

First. For as much as section 6 of article I of the constitution of Iowa provides that "all laws of a general nature shall have uniform operation. The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which in the same
10 terms shall not equally apply to all citizens."

Section 1754 is a law of a general nature, and it does not have a uniform operation in that, while all other citizens of the State of Iowa are permitted to make agreements as to commissions to be allowed their agents, or the manner of conducting their business, or the rates to be charged for commodities, fire insurance companies, are, by the section referred to, deprived of privileges granted to all other citizens of the State of Iowa; and the said law is not uniform in its operation in that it operates alone upon fire insurance companies, and by said section privileges and immunities which are granted to all other citizens of the State of Iowa and to persons doing business therein, are taken from fire insurance companies.

Second. Section 1754 of the Code and the several sections immediately following the same, to-wit, sections 1755, 1756 and 1757, violate and infringe article XIV of the amendments to the Con-

stitution of the United States whereby it is provided that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws because they purport to vest in the auditor of State the power to revoke the rights and privileges of your orators and the aforesaid companies to do business in this State for exercising their right to contract concerning matters which it is proper and right to contract and to do those things which are essential to the proper conduct of the business of the said companies, and by the provisions of the said law your orators and other fire insurance companies are denied the equal protection of the laws of the State of Iowa such as are possessed by all other citizens and persons doing business in the State of Iowa, and because by said provisions
11 your orators may be deprived of their property rights without due process of law.

Third. Section 10 of article I of the Constitution of the United States provides that no State shall pass a law impairing the obligation of contracts, and the said sections referred to purport to forbid and make unlawful any combination or agreement by or between two or more fire insurance companies, or between their officers, agents or employés, relating to the rates to be charged for insurance, amount of commissions to be allowed agents for procuring the same, or the manner of transacting their business, the right to do each and every of which was vested in the said companies and each of them by the acts by which they began and prosecuted their business in this State; and your orators, and each of them, and the other fire insurance companies for whom they sue, each and all paid large sums of money on account of said privilege and have made large expenditures in establishing and maintaining agencies and in building up their business in the State of Iowa, the benefits of which are largely lost to them if they shall be deprived of the right to combine their experiences and to employ persons or bureaus to ascertain and advise as to the just and equitable rates to be charged for various risks of insurance, and to make agreements as to their methods of doing business.

X. Your orators further show to the court that not only are they desirous of combining their experiences and subjecting the data gathered by them to a person to be employed by your orators and other fire insurance companies similarly situated for the purpose of analysis and classification to the end that a just and equitable value of carrying various risks of insurance may be ascertained for
12 the guidance and assistance of your orators in establishing rates to be charged; but they are also desirous of conferring, consulting and agreeing as to what classes of risks are non-insurable, as to what shall be regarded as moral hazards, and what shall be regarded as physical hazards, as to how various risks shall be classified, and as to other matters relating to the manner of doing business, to the end that the most efficient services can be rendered to property owners and citizens of the State of Iowa desiring fire

insurance, and to the end that just and equitable rates of insurance may be ascertained upon the various classes of risks; all of which would be beneficial, not only to your orators and the other insurance companies doing business in the State of Iowa, but will be beneficial and conducive to the welfare of the people of this State.

XI. Your orators further allege and charge, upon information and belief, that if your orators shall proceed in the manner hereinbefore alleged, complaint in writing will be made to the defendant charging your orators with violating the provisions of section 1754, and that the defendant as auditor of state will, in any event, summon before him for examination, under oath, the officers, agents or employés of your orators, or some of them, and that he will upon such examination issue an order revoking the authority of your orators, or some of them, to transact business within the State, and thereby incur an irreparable injury, all of which is contrary to equity and good conscience and tends to the manifest wrong and injury of your orators and all others similarly situated.

XII. And for as much as your orators can have no adequate relief except in this court, and to the end that the defendant, may, if he can, show why your orators and all others similarly
13 situated for whom they sue should not have the relief herein prayed, and that defendant answer this, your orators' bill, according to the course of practice of this court, but not under oath, his answer under oath being hereby expressly waived, and that it be declared by the decree of your honors that the provisions of the code of Iowa above referred to are in conflict with and in violation of the constitution of the State of Iowa and the Constitution of the United States for the reasons hereinbefore stated and for such other and further reasons as may by your honors be found to exist, and it be decreed that the said sections, and each of them, are void and of no effect, and that the defendant be by the order and injunction of your honors enjoined and restrained as follows:

That he, the said Byrel F. Carroll, auditor of state of the State of Iowa, and his successors in office, be enjoined from in any manner calling or bringing before him for examination, under oath, any officer or employé of your orators, or any other fire insurance company which may be in the same situation as your orators, for examination, under oath, of such officer or employé, and also from entertaining any complaint made to him in writing or otherwise by any party or parties charging any or either of the companies aforesaid with a violation of section 1754 of the Code of Iowa aforesaid, and from calling or causing to be brought before him upon such complaint for examination before him, under oath, any officer or employé of any or either of said companies, or institu-ing or prosecuting or holding such examination or an examination of any other witness or witnesses; and that he be further in like manner enjoined and restrained from issuing an order revoking the authority of any of said companies to transact business within the State, or in any

wise interfering with such company in transacting the busi-
14 ness of fire insurance in the State: and that he may be enjoined from in any manner enforcing any of the provisions of sections 1754, 1755, and 1756 of the Code of Iowa, and from revoking the authority of your orators, or any of them, or any fire insurance company similarly situated, from transacting business within the State for, on account of, or because of any alleged or claimed violation of the provisions of section 1754; and that he be enjoined from instituting any proceeding of any kind or character designed to enforce the provisions of said section 1754.

May it please your honors to grant unto your orators, and all other fire insurance companies similarly situated, a writ of injunction issuing out of this honorable court, and under the seal thereof, directed to the defendant herein and to his successors in office perpetually enjoining and restraining the defendant and his successors in office, as hereinbefore prayed; that your orators have and recover judgment for their costs herein expended; and that they have all such other and further relief as the circumstances of this case require and as is agreeable to equity and good conscience; that a writ of subpœna of the United States of America issue directed to the defendant, commanding him, at a day therein named, to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet and as is required by the principles of equity and good conscience.

(S'g'd) J. C. DAVIS AND
CARR, HEWITT, PARKER & WRIGHT,
Solicitors for Complainants.

(S'g'd) GEO. H. CARR, *Of Counsel.*

STATE AND SOUTHERN DISTRICT OF IOWA, } ss:
County of Polk, }

15 I, George R. Crossley, being duly sworn, depose and say that I am the agent for the State of Iowa for The Western Assurance Company and The British America Insurance Company of Toronto, Canada, two of the complainants in the foregoing bill; that I have read the said bill and know the contents thereof and the matters and things therein alleged are within my personal knowledge; and that said bill is true except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

(S'g'd) GEO. R. CROSLY.

Subscribed and sworn to before me this 11th day of March, 1903.

(S'g'd) FRED P. CARR,
[SEAL.] *Notary Public, Polk County, Iowa.*

(Endorsed:) In U. S. circuit court, central division, southern district, of Iowa. The Greenwich Ins. Co. of New York, *et al. vs.* B. F. Carroll, auditor. Bill of complaint. Filed March 12, 1903 E. R. Mason, clerk, J. C. Davis and Carr, Hewitt, Parker & Wright, soliciter- for complainants.

16 And on the same day, to-wit: the 12th of March, 1903, there issued out of said clerk's office a subpœna in chancery, directed to the said Byrel F. Carroll, which was afterwards on the 13th day of March 1903 returned into said clerk's office by the marshal of said district and which said subpœna, together with the return thereon, is in words and figures following, to-wit;—

UNITED STATES OF AMERICA,
Central Division, Southern District of Iowa.

The President of the United States to Byrel F. Carroll, auditor *for* state of the State of Iowa:

We command you, and each of you, that you appear before the judge of the circuit court of the United States for the southern district, of Iowa, at Des Moines, on the first Monday of April it being the sixth day of April next (A. D. 1903) to answer to the bill of complaint of the Greenwich Insurance Company of New York; the Insurance Company of North America of Philadelphia; the Hanover Fire Insurance Company of New York; National Fire Insurance Company of Hartford; Orient Insurance Company of Hartford; British American Insurance Company of New York; Manchester Assurance Company of Manchester England; Sun Insurance Office of London; London & Lancashire Fire Insurance Company; Western Assurance Company of Toronto; British-America Assurance Company of Toronto this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the said district of Iowa: Returnable to the April rule day, it being Monday, the sixth day of April A. D. 1903.

Witness, the Honorable Melville W. Fuller, Chief Justice of
17 the Supreme Court of the United States, at the city of Des Moines, Iowa, this the 12th day of March A. D. 1903 and of
[SEAL.] the Independence of the United States the 127th.

(S'g'd) EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

MEMORANDUM.—The within named defendant is notified that unless he enter his appearance in the clerk's office of
[SEAL.] said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above

stated the complaint will be taken against him as confessed, and a decree entered thereon accordingly.

(S'g'd) EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

No. 2410. Eq.

Subpœna in Chancery.

Circuit Court of the United States, Southern District of Iowa, Central Division.

GREENWICH INSURANCE CO. ET AL.
vs.
BYRELL F. CARROLL, Auditor.

Returnable to rule day first Monday in April A. D. 1903. E. R. Mason clerk.
Filed March 13th A. D. 1903. E. R. Mason clerk.

J. C. DAVIS,
CARR, HEWITT PARKER & WRIGHT,
Comp'ts Sol.

Residence Des Moines.
437–119. Hedrick Mar. 12, 1903.

18 This writ came into my hands for service on the 12 day of March A. D. 1903 and I served the same on the within named Byrel F. Carroll auditor *for* state on the 13 day of March 1903, by delivering a true copy to him at Des Moines in the county of Polk and State of Iowa.

(S'g'd) GEO. M. CHRISTIAN,
U. S. Marshal.
H. L. HEDRICK, *Deputy.*

Marshal's Fees.

St. car fare	$ .10
Service on	2.00
Copy	
	$2.10

19 And afterwards, to-wit on the 10th day of April, 1903, there was filed in said clerk's office a præcipe for appearance, which præcipe is in words and figures following, to-wit:—

In the United States Circuit Court, Southern District of Iowa.

THE GREENWICH INSURANCE CO. OF NEW York *et al.*, Plaintiff,
vs.
BERYL F. CARROLL, Auditor of State, Defendant.
} No. 2410. Equity. Præcipe for Appearance.

The clerk of said court will please enter my appearance for Byrel F. Carroll, auditor of state for the State of Iowa. Defendants in above cause.

(S'g'd) CHAS. W. MULLAN,
Solicitor for Def't.

The names of all defendants against whom default is claimed must be written in full.

(Endorsed:) U. S. circuit court, southern district of Iowa, No. 2410 Eq. The Greenwich Inst. Co. of New York *vs.* Beryl F. Carroll, auditor of state, Præcipe for appearance. Filed April 10, 1903. E. R. Mason, clerk.

20 And afterwards, to-wit on the 6th day of June, 1903, there was filed in said clerk's office, demurrer of the above named defendant, Beryl F. Carroll, to the bill of the complainants above named, which demurrer is in words and figures following, to-wit:—

21 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and Others, Complainants,
against
BERYL F. CARROLL, Auditor of State of the State of Iowa and Citizen of the State of Iowa, Defendant.
} In Equity.

Demurrer of the Above Named Defendant, Beryl F. Carroll, to the Bill of the Complainants Above Named.

Comes now this defendant, Beryl F. Carroll, by protestation, not confessing or asknowledging any of the matters or things contained in the bill of the above named complainants to be true is such manner or form as the same are set forth herein, and demurs to said

bill of complaint. And for causes of such demurrer respectfully shows to this court—

I. That it appears by the complainants' own showing by said bill, and upon the face thereof, that they are not entitled to the relief prayed in said bill against this defendant, for the reasons as follows:

II. That it affirmatively appears by said bill that all of the complainants named therein, and all other persons described
22 therein as being similarly situated as the complainants, and for whom relief is incidentally asked in said bill, are corporations foreign to the State of Iowa and organized and carrying on their business under the laws of other States of the United States than the State of Iowa, and under the laws of countries foreign to the United States. And said bill further affirmatively shows that all of said complainants and other persons referred to therein as being similarly situated are engaged in conducting, carrying on and transacting the business of fire insurance within the State of Iowa and within other States, Territories and foreign countries, and that the same constitute and are a natural class for legislative purposes; that the classification made by the legislature in the enactment of sections 1754, 1755, 1756 and 1857 of the Code is a natural and not an arbitrary classification, and that the provisions of said sections of the Code of the State of Iowa operate equally and uniformly upon every person and corporation in such natural class within the territorial jurisdiction of the State, and who is brought within the relations and circumstances specified in and affected by the provisions of said sections.

And it affirmatively appears by said bill and by the allegations thereof that the provisions of sections 1754 and 1755 of the Code are laws of a general nature and have a uniform operation, and that the same do not grant to any citizen or class of citizens privileges or immunities which in the same terms do not equally apply to all citizens; and affirmatively shows that the provisions of said sections do not infringe or violate section 6 of article I of the constitution of the State of Iowa, and that the same are not invalid for that reason.

23 III. That it affirmatively appears from the allegations of said bill that sections 1754, 1755, 1756, and 1757 of the Code of Iowa do not violate and infringe article XIV of the amendments to the Constitution of the United States, and do not deprive any person of life, liberty or property without due process of law, and do not deny to any person within the jurisdiction of Iowa equal protection under the laws of the State; and affirmatively shows that the power, given to the auditor by the sections of the code referred to, to revoke the right of the complainants to do business in the State of Iowa, can only be exercised by him upon a violation of a valid law of the State lawfully regulating the conduct of the business carried on by the complainants, and that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa do not prevent

or abridge the right of complainants to make and carry out any lawful and legal contract connected with the transaction of their business within the State.

IV. That it affirmatively appears by the allegations of said bill that the provisions of sections 1754, 1755, 1756 and 1757 do not violate the provisions of section 10 of article I of the Constitution of the United States, and that the same do not in any wise impair the obligation of contracts or affect or interfere with any vested right of the complainants, or the other fire insurance companies for whom they sue; and affirmatively shows that the provisions of said sections are not invalid because repugnant to any provision of the Constitution of the United States.

And it further affirmatively appears by said bill that the sole object and purpose of the legislature of the State of Iowa enacting said sections of the code was to prevent an unlawful and illegal combination between corporations conducting the business of in-
24 suring property against loss or damage by fire within the State of Iowa, for the purpose of eliminating and preventing competition as between persons, companies, corporations and associations carrying on the business of fire insurance in the State of Iowa; and that the provisions of said law in nowise affect the legitimate and lawful business of persons, companies, corporations and associations transacting the business of fire insurance within the State of Iowa, nor prevent them from entering into and performing all legitimate contracts in any wise connected with the conduct of such business.

V. It further affirmatively appears by said bill that this court has no jurisdiction to hear and determine the questions presented by said bill, or to grant the relief asked therein; and this defendant objects and demurs to the jurisdiction of this court upon the following grounds:

First. That said bill affirmatively shows that the complainants have no claim of any kind or character against the defendant, and that there is no amount in value of money or property involved in any controversy between the complainants and the defendant, or in any wise involved in this action; and said bill further affirmatively shows that no question affecting the life or liberty of the complainants, or any other person or persons for whom they sue, is involved herein, and that upon the allegations of said bill, and from the nature of the case as stated therein, there can be no judgment for any sum or amount rendered herein in favor of the complainants and against the defendant, nor any relief granted to the complainants against the defendant necessary to give this court jurisdiction to hear and determine the questions presented by the bill.

Second. That it affirmatively appears from said bill that complainants have in nowise been injured in life, liberty or prop-
25 erty by the provisions of sections 1754, 1755, 1756 and 1757 of the Code, and that no attempt has been made by the defendant as auditor of state of the State of Iowa or otherwise to en-

force the provisions of said sections against complainants, and that this action is brought in the circuit court of the United States for the purpose of having a State statute declared invalid and to anticipate any acts of the officers of the State of Iowa charged with the enforcement of such statute when there has been no violation of such law by complainants and when the constitutionality and validity of said statute has not been drawn into controversy in any action or proceeding whatsoever between the complainants and the defendant, and at a time when no personal or property rights of any kind or character are in any wise involved in any controversy existing between the complainants and the defendant.

(S'g'd) CHAS. W. MULLAN,
Attorney General of the State of Iowa, Solicitor and of Counsel for Defendant, Beryl F. Carroll.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

(S'g'd) CHAS. W. MULLAN,
Of Counsel for Defendant.

(Endorsed:) Circuit court of the United States, southern dist. of Iowa, central division. The Greenwich Insurance Co. of New York *et al.*, complainants, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant. Demurrer of the above named defendant, Beryl F. Carroll, to the bill of the complainants above named. Filed June 6, 1903. E. R. Mason clerk. Charles W. Mullan, attorney general of Iowa.

26 And afterwards, to-wit, on the 26th day of September, 1903, there was filed in said clerk's office an order; which order is in words and figures following, to-wit:—

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

GREENWICH INSURANCE COMPANY ET AL.
vs.
BYREL F. CARROLL, State Auditor.
} No. 2410. Equity.

Order.

The complainants are given leave, without terms, to file an amendment to their bill in equity. The said amendment shall contain recitals of and concerning section 6 article 1, of the Iowa constitution, and wherein the Iowa statutes referred to in the bill are in conflict with said constitutional provision, as claimed by complainants.

The said amendment shall be filed within four days from this date, and shall be regarded as having been filed before defendant filed his demurrer.

And defendant's demurrer now on file shall be held to apply to said amendment as well as to the original bill.

Done at Des Moines, Iowa, September 26, 1903.

(S'g'd) SMITH McPHERSON, *Judge.*

27 SEPTEMBER 26, 1903.

The clerk will record the above order.

(S'g'd) SMITH McPHERSON, *Judge.*

(Endorsed:) Filed Sept. 26, 1903, E. R. Mason, clerk. Ent. T. 52.

28 And afterwards to-wit; on the 28th day of September, 1903, there was filed in said clerk's office an amendment to bill of complaint, which amendment is in words and figures following to-wit:—

In the United States Circuit Court in and for the Southern District of Iowa, Central Division.

GREENWICH INSURANCE CO. ET AL., Complainants, *vs.* BYREL F. CARROLL, Auditor of State of the State of Iowa, Defendant.	In Equity. Amendment to Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the southern district of Iowa:

In pursuance of an order of the Honorable Smith McPherson, one of the judges of said court, made and entered herein on the 26th day of September, 1903, complainants amend their bill of complaint on file herein as follows:

Strike out of paragraph nine of said bill the words beginning with the word "first" in the eleventh line of said paragraph, and ending with the word "citizens" in the sixteenth line of said paragraph, and insert in lieu thereof the following:

First. For as much as section six of article one of the consti-
29 tution of the State of Iowa provides that "All laws of a general nature shall have uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens;" and for as much as section thirty of article three provides "Where a general law can be made applicable, all laws shall be general and of uniform operation through the State."

That section 1754 relates to matters where a general law could be made applicable and said law is not of uniform operation throughout the State.

Wherefore, your orators p-ay as in their original bill.

(S'g'd) CARR, HEWITT, PARKER & WRIGHT,
JAMES C. DAVIS,
Solicitors for Complainants.

(S'g'd) GEO. H. CARR, *Of Counsel.*

(Endorsed :) In U. S. circuit court, central division, southern district, of Iowa. Greenwich Ins. Co. *et al. vs.* Byrel F. Carroll aud. *et al.* Amendment to bill of complaint. Filed Sept. 28, / 03, E. R. Mason, clerk. Carr, Hewitt, Parker & Wright, attorneys for complainants.

30 And afterwards, to-wit :—on the 13th day of October 1903, there was filed in said clerk's office an opinion, which opinion is in words and figures following, to-wit :—

31 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE GREENWICH INSURANCE COMPANY ET AL.
vs.
BYREL F. CARROLL, State Auditor. } No. 2410. Equity.

James C. Davis, and George H. Carr, for complainants.
Charles W. Mullan, attorney general, for defendant.

Opinion.

MCPHERSON, *J.:*

This case is pending on defendant's demurrer to a bill in equity, filed by a number of foreign fire insurance companies, against the defendant, who is auditor of the State, and insurance commissioner.

The bill asks that defendant be restrained from taking action against them, under certain statutes of the State, alleging that the statutes in question are void because in conflict with both the State and Federal Constitutions. It is alleged that all these companies have been engaged in doing a fire insurance business in the State for a great many years, paying the fees and taxes, and in all respects complying with the laws relating to such companies. And it is also alleged that prior to the adoption of the statutes in question, that they had established their business in equipping offices, paying out large sums in advertising and so on. And from year to year,

32 including the current year, they having fully complied with the laws of the State in making their reports as well as all

other things, and the auditor gave each of them a certificate authorizing them to continue in business, they each have an extensive business in Iowa, carrying large and numerous risks on property in the State.

It is alleged that there are eighty-five foreign companies, including complainants, doing business in the State, and which pay to the State annually large sums as fees and taxes.

The statutes complained of were enacted in the year 1896, and are now parts of the code, being as follows:

Section 1754, provides that it shall be unlawful for two or more fire insurance companies doing business in this State, or for the officers, agents, or employés to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amounts of commissions to be allowed agents for procuring the same, or the manner of transacting fire insurance in this State. Penalties and fines are to be imposed for a violation of the statute.

Section 1755, provides that the auditor shall summon before him and examine under oath all those he suspects of violating the statute. And if they fail to appear, or if he finds that they are doing the things inhibited, he shall revoke their permits to do business, and thereafter they shall not do business in the State.

It is alleged that the auditor is about to proceed against them, and that he will oust them from the State unless he is restrained.

The first question presented is; are the statutes in conflict with the State constitution?

33 Section 6, of article I, provides that all laws of a general nature shall have uniform operation, and that privileges and immunities which shall not on the same terms be granted to all.

Section 30 of article III, provides; "that where a general law "can be made applicable, all laws shall be general and of uniform "operation throughout the State."

The question was fully discussed in all its phases in the case of State *vs.* Garbroski, 111 Iowa 496. The statute under discussion provided that peddlers plying their vocation outside of a city or town, should pay a license or tax, *but* that a person who had served in the civil war need not pay the fee. The statute was held unconstitutional.

It is apparent to all that the statute involved in that case is not akin to the statutes now before the court.

Judge Ladd in the Garbroski case reviews many, if not all the cases upon the subject, and one need not look further for the correct rule, or for the authorities, than his admirable opinion in the Garbroski case.

All laws of a general nature shall have a uniform operation.

These laws in question do have a uniform operation. No one can expect that *all* laws, shall operate upon *all* people. We have laws with reference to the legislature, and those laws operate upon that body alone. So as to the office of the auditor, and a score of other offices, State, county and municipal. And it is the same as to

private affairs. Railroad companies are held liable for an injury to an employé brought about by the negligence of a fellow servant. Such legislation, as all know, is valid.

Hundreds of statutes have been enacted in this State known by all to be intended to apply in each case to a single city, or town,
34 corporation or trade. That they are valid, but few doubt.

Statutes were enacted many years ago applying to bridges across the Mississippi river when there was but one bridge, and now there are but few. No one doubts their validity.

Years ago statutes were passed authorizing the sale of a railroad to one at the State line, to thereby make a connecting line. But few, if any, ever doubted their validity.

Illustrations will readily occur, by which I could multiply these cases. And so it is as to granting immunities to some, which are denied to others. Exempting farmers, merchants, manufacturers, mining companies and other corporations from liability in case an employé is injured by another employé's negligence, and holding a railroad liable, well illustrates the whole proposition.

Classifications can be made, providing they are not arbitrarily made.

If the Iowa statute provided that a railroad company were liable in the case above stated, where an employé was injured in building a bridge, cutting timber, or at work in the shops, all the courts would have held the law invalid. But the legislature provided for a recovery only when the injury occurred in the hazards arising from the use and operation of the road. If these statutes in question are otherwise valid, then it is not an arbitrary classification, because they apply to a business peculiar in itself.

All will agree that there must be rules and regulations applicable to insurance companies, not applicable to other corporations. There must be some officer, with the powers of an insurance commissioner, to govern and direct, and control them.

The Iowa supreme court has upheld so many statutes in
35 principle like this, that the question now being discussed seems very clear to me. The following statutes have been held valid;

1. Innumerable curative and legallizing acts.
2. Statutes making railway companies liable for double damages for stock killed.
3. Allowing a defendant a continuance, as of course, when in the military service.
4. Classifying railroads as to charges for carrying freights and passengers.
5. Taxes need not operate upon all persons alike.
6. Taxing railroads by one set of officers, and individuals by another.
7. Exempting property from water taxes.
8. Taxing foreign insurance companies on their business.

9. Exempting certain property from municipal taxes, and compelling others to pay such taxes.

10. Taxing transient merchants.

11. Assessing stock of State bank differently from that of a national bank.

12. A special law authorizing the building of a particular railroad.

No doubt there are others that have been upheld.

Counsel for complainant seem to have forgotten, that special legislation in all cases is not prohibited. Special legislation is prohibited as to six enumerated subjects.

1. Assessment and collection of taxes.
2. For laying out highways.
3. For changing the names of persons.
4. For incorporating cities and towns.
5. For vacating roads, streets and town plats.
6. For locating or changing county seats.

But as no one of the above referred to provisions of the
36 constitutions is applicable to this case, it is necessary to see what other special legislation is prohibited. The constitution then recites;

"In all cases above -numerated, and in all other cases where a "general law can be made applicable, all laws shall be general and "of uniform operation throughout the State."

It is too apparent to admit of discussion, that there are hundreds of subjects upon which the State through its legislature should speak;

"Where a general law can *not* be made applicable, and where it "can *not* be of uniform operation throughout the State."

And insurance is one of these subjects.

In my judgment the statutes in question, are not prohibited by either of the State constitutional provisions.

Chapter 4, title 9, of the Iowa Code, which chapter includes the statutes now under consideration, affirmatively make- two, among other things appear:

1st. That it is the policy of this State to invite solvent and reliable foreign insurance companies to come into this State, particularly for the purpose of giving the people the benefit of competition, and partly for the purpose of obtaining revenue for the State treasury. And both purposes are subserved.

2nd. That it is the duty of the State auditor to license such companies to do business in the State, if upon investigaton he finds them solvent and financially worthy. Such being the policy of the State, and such being the duty of the auditor, he cannot deny the foreign companies of the kind above described, from receiving the proper certificate and from doing an Iowa business.

Should he undertake to keep such a company out, the proper court will by mandamus compel him to grant the authority, and

admit such company. This being so *he* cannot put them out,
37 after they are once lawfully and rightfully in, excepting by virtue of the power lodged with him under a valid and constitutional statute.

What was said by the chief justice in the case of R. R. *vs.* State, 31 N. J. Law 531, *543*, although in a tax case, is pertinent:

"It is not denied that the corporate existence of a company is recognized, not by right but by grace, in foreign jurisdictions, nor that each government has the competence to refuse to recognize such existence, except on its own conditions. The principle is universally acknowledged. Hence, laws requiring insurance companies and other foreign corporations to file bonds and submit to other exactions, as a prerequisite to their admission in an incorporated capacity, into the State. Such laws when rightfully made, are evidently mere police regulations, designed to protect the citizens of the State in which they are enacted from loss or imposition, and on this ground their legality cannot be drawn in question. But a tax law, having revenue for its object, is based upon a principle entirely different. The right to tax for revenue is the right of the Government to take so much of the property of the person or company on whom the tax falls, as such government may deem necessary for its public wants. The act of taking the property, therefore, must of necessity be an acknowledgement of the legal status of the person or company whose property is taken. To assert that the company whose property is thus taken has no rights but such as the government taking it chooses to confer, is to assert that such company has no title to its property but such as may be conceded to it by the taxing power. It seems to be utterly inconsistent with legal principles, which have always been deemed axiomatic, to hold that a government can recognize the legal existence of a foreign corporation for the purpose of taxation, and at the same time can deny such legal existence for the purpose of depriving it of those rights which belong to every individual or company known to the law. Such a doctrine would, obviously, offer the entire property of foreign corporations as a prize to the rapacity of any State in whose territories it might be, or over which it might happen to be carried. It is readily to be admitted that a law imposing certain terms upon all foreign corporations as conditions precedent to their acquisition in this State, of the right to act in the unity of their corporate existence, would be legal. Such law would prevent foreign persons from doing any legal act in this State as a corporation but can it be maintained that such a law would have the further effect of leaving the property of the company as a spoil of the first taker?"

These companies have the requisite capital, being solvent, having paid their taxes, and license fees, and having done all the things required of them by the laws of Iowa, and the exactions of the auditor, having been invited to do business in the State, and being
38 now rightfully here, they for the time being, and until the policy of the State is changed, have the rights, neither more

nor less than the Iowa companies enjoy. And illegal exactions can not be made upon them.

In Insurance Company *vs.* Morse, 20 Wallace 445, the Supreme Court held a statute to be void which required a foreign company to agree not to remove a case to the Federal courts.

But in Doyle *vs.* Insurance Co., 94 U. S. 535, the Supreme Court recognized the right of a State to oust the company if it did remove its cases to the Federal courts. It so held, not because such removals were a good reason for ousting the companies, but because the State had the right to exclude them without reference to the reason.

But that is not the question now being considered. It is not a question of keeping a foreign company out. The question is shall *all* companies, foreign and domestic, now rightfully in the State be compelled to submit to the exactions of an invalid and unconstitutional statute?

It is quite certain that an Iowa corporation cannot by any legislation be ousted or dissolved by reason of invoking the Federal Constitution. And if the Iowa legislature should ever be persuaded that the better way to prevent monopolies as between foreign companies, is to create a monopoly by giving all the business to Iowa companies, it can easily be done. Let there be a legislative declaration to the effect, that the local companies may do as they see fit if they stay inside the constitution, but that foreign companies must quit the State if they hold up the Federal Constitution as their shield. It is scarcely possible that such a position will ever be taken. But Wisconsin once did. And if Iowa ever does, then and not until then will the Doyle case become binding as to Iowa legislation.

The distinct policy of Iowa for many years has been to invite foreign insurance companies into the State. They have
39 been imposed with some burdens, not imposed upon home companies. And that this is allowable, no one denies. That they can be wholly excluded, no one denies. But for the obvious reasons of competition for the benefit of people needing insurance, and for monies for the State treasury, the State for years has said that they may come, and may remain in. And yet the attorney general now contends that in the face of such policy, that this court by construction and implication, shall say that such foreign companies shall be punished for seeking the benefits of the Federal Constitution.

It must be kept in mind that the statutes in question do not apply alone to foreign companies. Those laws, if valid, apply to *all* companies. This bill in equity is filed by the complainants for the use and benefit of *all* companies.

It is not at all necessary in this case, to make allegations of diverse citizenship. There are such allegations, but they are unnecessary allegations in this case. Home companies could be joined as plaintiffs in this action. Not only one question, but the principal con-

troversy herein, is a Federal question. The court takes jurisdiction because of that question, regardless of citizenship, and will retain jurisdiction over all questions in the case, including questions that are not Federal, regardless of the citizenship of the parties.

See opinion of Judge Brewer, in Omaha Company *vs.* Cable Company, 32 Fed. Rep. 727, and cases cited.

But it is argued that there is a remedy at law.

A court of equity has the power, and it is likewise its duty, to enjoin the enforcement of an unconstitutional statute, when such enforcement would subject the party to innumerable prosecutions, and particularly when such prosecutions would pending litigation work great hardships, and wrongs and damages.

The recent decision of the circuit court of appeals for this circuit in the case of City of Hutchison *vs.* Beckham, 118 Fed. Rep.
40 399, is an authority, and of binding force upon this court. It puts at rest the question as to the jurisdictional amount involved. It also puts at rest the duty and the power of a court of equity to enjoin the enforcement of an invalid law, when prosecution would be followed with loss of business, expense and hardships. And it also holds that the fact, that the party could resist the enforcement of such invalid law, by a defence to proceedings in the State court, does not prevent a court of equity, State or Federal from taking jurisdiction. A State statute can neither enlarge nor curtail the equity jurisdiction of this court. And it will not do to say, that because a law is unconstitutional, and because all are conclusively presumed to know the law, that there need be no fear, that the officer who is commanded to act under the statute, will attempt to enforce it. It is the duty of the State auditor to enforce the statute, if it is a valid statute, and he no doubt feels, that it is not incumbent upon him to pass upon its validity, but will recognize it as of force until it is otherwise held by the courts.

And it is alleged in the bill before me, that the State auditor will enforce the statute, if not restrained by the progress of a court. In the light of such declarations, and the presumptions that he will attempt to enforce the statute, the case of Osborne *vs.* United States. 9 Wheaton, 738, must be regarded as an authority.

And the reasons given by Chief Justice Marshal in the opinion in that case as to why Osborne the State auditor of Ohio, should not be allowed to enforce a statute of that State, are equally applicable to Mr. Carroll, the auditor of Iowa, if the statute in question is invalid.

In the Doyle case (94 U. S. 535), the statute of Wisconsin specifically provided, that if any foreign company should remove a case to the Federal court, that the State officer should under an imperative duty, recall and revoke the license of such foreign
41 company to do business in the State.

But in the case at bar, foreign and domestic companies are placed on an exact equality. And the statute does not say that if

the foreign companies, shall invoke the Federal Constitution, that such a wrong has thereby been done, that the State auditor can punish it, by removing it from the State.

But in the case at bar, the statute if applicable, and if enforced, will be made to read in effect, that any insurance company domestic as well as foreign, shall not dare to look further than the Iowa laws, and that they shall not at the peril of their existence in this State, dare to claim any right under "the supreme law of the land."

This to me is not comity between the States, but subordinates the nation to a petty position that it has not occupied for many years.

The statute in question provides that two or more companies shall not do any of the following things:

A. Make or enter into any combination or agreement relating to the rates to be charged for insurance.

B. Agree as to the amount of commissions to be allowed agents for procuring the same.

C. Agree as to the manner of transacting the fire insurance business in the State.

The first, I shall not discuss. But as to the second and third propositions, I have no doubt but that the statute is beyond the power of legislation, and will give my reasons;

As was held in Hooper *vs.* California, 155 U. S. 648, and cases cited, insurance is not commerce. Therefore the many cases cited by the attorney general, arising under the "commerce clause" are not in point. They are irrelevant, and do not have the slightest application. The commerce cases were so decided, because
42 all parts of the constitution applicable, must be construed together. And so the Supreme Court has within the last few years in the Addystone Pipe case, and Traffic Association cases, and the circuit judges in the Northern Securities case, made it plain to every one, that if the question is one of commerce between the States, then the right and liberty of contract must in a measure yield. That is to say, Congress shall have the right to regulate commerce between the States, even though the freedom of contract is curtailed. If this were not so, then the commerce clause would be subordinated to other provisions of the Constitution. The two provisions of the Constitution must be construed together.

There is another class of cases, numerous in number, sound in principle, but which in my judgment have no application to the question now being considered. I refer to cases arising under the police power of the States. Such a case is that of Holden *vs.* Hardy, 169 U. S. 366. The State statute inhibited the employment of a person for more than eight hours a day in underground mines.

The Supreme Court held the statute a valid exercise of the police powers, as protecting the life and health of individuals and that the same could not be contracted away.

No one denies that insurance is a legitimate business, and one that is necessary to the welfare of all people who cannot afford to carry their property without such guaranty against loss. To carry on the

business, calls for the services of men of affairs and experience. Men must be employed, and that requires contracts. Re-insurance is often required, and that calls for contracts between two or more companies. Adjusters are necessary and one such person must, or often does, act for several companies. One risk oftentimes
43 must be apportioned between several companies. Companies must charge reasonable rates, and in some States can be compelled to pay the face of the policy. What are reasonable rates, and how are such rates determined? No doubt partly from the history and statistics of the business, and partly from current experience. One risk is more hazardous than another, and rates must vary. Telephone wiring may, or may not increase the risk. Electric lighting with or without "cut-offs" or "step-downs," may or may not increase the risk. Experiments, and experience and statistics may show, or differences of opinion may exist. Some risks are greater in the summer and others in the winter. The salary of officers is one item of the costs. The commissions of the solicitors have much to do with it. In short the business cannot be carried on for a day without making contracts, not alone with the insured, but with other companies and with persons *explayed* by other companies.

The Attorney General seeking to avoid the force and weight of the authorities, leaves but little for argument, when he concedes in his two briefs as follows:

"It is urged that the act of the legislature is unconstitutional be-
"cause it takes from the fire insurance companies doing business
"within the State the right of contract, which is one of the liberties
"guaranteed by the fourteenth amendment.

"The conclusive answer to that contention is that the statute
"does not take away from any insurance company transacting busi-
"ness within the State the right to contract with any person or cor-
"poration desiring to enter into any lawful contract with such com-
"pany, nor does it in any manner abridge the right to make such
"lawful contract."

"The sole purpose of the statute, and the end sought to be accom-
"plished by its enactment, is to prevent fire insurance companies
"from entering into a contract or combination whereby their rights
"to enter into lawful contracts with those desiring fire insurance is
"abridged and restrained.

"It is conceded at the outset that any act of the legislature, which
"restricts or abridges the liberty of contract guaranteed by sec-
"tion I, of the fourteenth amendment to the Federal Constitution, is valid."

That the authorities cannot be reconciled, is known by
44 all. For instance, statutes quite identical in language, meaning, and purpose, were before the courts in Holden *vs.* Hardy, *supre*, and in *Ex parte* Morgan 58 Pacific Rep. 1071 (Colorado), and the one decision is squarely against the other. Practically nothing is left to be said on either side, after reading the two

opinions. But in those cases, the contracts inhibited, were by reason of statutes to protect the health of individuals for whose benefit the laws were enacted.

Then again the subject is exhaustively treated by Mr. F. N. Judson, in a paper "Liberty of contract under the police power," before the American Bar Association in 1891. (See reports Am. Bar. Ass'n for that year, vol. 14 page 231.)

There are three recent cases, which cover the entire question and which come so near citing all the authorities, that one need look but little further for the authorities upon the subject.

People *vs.* Orange County — N. E. Rep. (N. Y.) page —.
Republic Co. *vs.* State, 66 N. E. Rep. (Indiana) 1006.
State *vs.* Kreutzberg, 90 N. W. Rep. (Wisconsin) 1098.

These cases are not cited as involving inhibited contracts, like the ones prohibited by the Iowa statutes, but they are cited as being in principle much the same, and because of the exhaustive discussion of the question. And the fact that the law assailed is what is known as an "anti-trust law" does not take it out from under the Federal Constitution.

In *re* Grice 79 Fed. Rep. 627.
Connolly *vs.* Sewer Pipe, 184 U. S. 540.

As against those cases see State *vs.* Monnett, 61 Ohio State 520.
Cleland *vs.* Anderson, 92 N. W. Rep. (Nebraska) 306.

But it becomes academic, and mere common place, to undertake to write what this court, or that court has said on the ques-
45 tion. Law is not an exact science, as is illustrated by the cases arising under the fourteenth amendment, perhaps more than by any of the other debatable legal questions. The "liberty" of the Constitution has been defined, and it will continue to be defined by some as the right of an individual to keep out of prison, excepting for crime committed. Others will define "liberty" as also including the right to earn a livelihood, acquire property, perform services for another, employ others, make contracts not tainted with an illegal or immoral consideration, and those not injurious to the health or welfare of people. I prefer the latter definition.

Within the meaning of the Constitution, as has been held many times by the Supreme Court a "corporation" is a "person." A corporation has the same rights to agree or contract within the scope of its powers, as has a person.

Can it be possible that legislation like that now presented to the court is valid?

If it is valid, then what becomes of the provisions "No man shall be deprived of equal protection of the law," or of that other provision, "No man shall be deprived of life, liberty, or property without due process of law?" Justice Field once said:

"The right to pursue them without let or hindrence is "a dis-

"tinguished privilege of the citizens of the United States, and an "essential element of that freedom which is their birthright."

Another justice of the United States Supreme Court said:

"Yet the power does not and cannot extend to prohibiting a "citizen from making contracts, and this is institutional law in Eng-
"land as well as America."

46 Another great judge has said:

"Liberty includes the right to acquire property, and that "means and includes the right to make and enforce contracts."

And I dare say that there is not an appellate court in this Union but has given a like definition of liberty—;

"The right to make and enforce contracts."

When the right of contract ceases, the right to do business is at an end. The right to purchase, hold, or sell, property must depend upon contract, and without contracts, business affairs cannot be carried on for a single day. And the slightest knowledge of insurance will persuade anyone, that companies both home and foreign, must have some arrangements, and must make some contracts with other companies. Farmers, merchants, laboring men, railway companies, and all other classes of both men and associations must do the same, and both the laws and Constitution permit it. And to single out insurance companies and say thay shall not, is not lagical, and in my judgment not allowable under the fourteenth amendment.

Employers of labor agree what they will pay, and laboring men agree for what sum they will work. Buyers and vendors of live stock, grain, groceries, clothing, anything and everything make their agreements. Farmers will and do agree as to the price for which they will sell, and what they will pay for labor, but this statute says that insurance companies shall agree as to none of these things.

Of course I do not hold, that insurance companies can combine and thereby enter into a conspiracy to accomplish any desired purpose. But no such question is involved in this case. I am only holding that insurance companies may make the usual con-

47 tracts that all other persons and corporations may make, which the statute seeks to take from them, and which will be taken from them if the statute in question is upheld.

My conclusions are that the statute in question is invalid for the reasons stated, and that the State auditor cannot enforce its provisions.

The demurrer will be overruled and the defendant allowed to file a plea or answer as he may deem best.

Des Moines, Iowa, October 19, 1903.

(Endorsed:) Filed October 13 1903. E. R. Mason, clerk.

48 And afterwards, to-wit, on the 19th day of October, 1903, there was filed in said clerk's office, an order, which order is in words and figures following, to-wit:—

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE GREENWICH INSURANCE COMPANY ET AL.
vs.
BYREL F. CARROLL, State Auditor.
} No. 2410. Equity.

Order.

For the reasons given in an opinion this day filed herein the demurrer of defendant to complainants' bill in equity is overruled, and defendant excepts.

If defendant elects to plead further, he shall by the December 1903 rule day file a plea or answer, or both, as he may be advised.

Done this October 19th 1903.

(S'g'd) SMITH McPHERSON, *Judge.*

OCTOBER 19TH, 1903.

The clerk will enter the above order of record.

(S'g'd) SMITH McPHERSON, *Judge.*

49 (Endorsed:) Greenwich Ins. Co. *vs.* Byrel F. Carroll, St. audtr. Filed Oct. 19, 1903, E. R. Mason, clerk. T. 53.

50 And afterwards, to-wit;—on the 7th day of March, 1904, there was filed in said clerk's office a decree, which decree is in words and figures following to-wit;—

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division, at Des Moines.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
The Insurance Company of North America, of Philadelphia, a Corporation Organized and Existing under the Laws of the State of Pennsylvania, Having its Principal Place of Business in the City of Philadelphia, and a Citizen of Pennsylvania;
The Hanover Fire Insurance Company of New York, a Corporation Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of New York;
National Fire Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;

Orient Insurance Company of Hartford, a Corporation Organized and Existing under the Laws of the State of Connecticut, Having its Principal Place of Business in the City of Hartford, and a Citizen of the State of Connecticut;

British American Insurance Company of New York, Organized and Existing under the Laws of the State of New York, Having its Principal Place of Business in the City of New York, and a Citizen of the State of New York;

Manchester Assurance Company of Manchester, England, a Corporation Organized and Existing under the Laws of Great Britain, Having its Principal Place of Business in the City of Manchester, and a Citizen of Great Britain;

51 Sun Insurance Office of London, a Corporation Organized and Existing under the Laws of Great Britain, Having its Principal Place of Business in the City of London, and a Citizen of Great Britain;

London & Lancashire Fire Insurance Company, a Corporation Organized and Existing under the Laws of Great Britain, Having its Principal Place of Business in the City of London, and a Citizen of Great Britain;

Western Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

British America Assurance Company of Toronto, a Corporation Organized and Existing under the Laws of the Dominion of Canada, Having its Principal Place of Business in the City of Toronto, and a Citizen of the Dominion of Canada;

Suing on Their Own Behalf and on Behalf of All Other Fire Insurance Companies Similarly Situated Who May Come in and Contribute to the Expenses of This Suit, Complainants,

vs.

BERYL F. CARROLL, Auditor of the State of Iowa, a Citizen of the State of Iowa, Defendant.

Decree.

This day this cause came on for hearing, the complainants, The Greenwich Insurance Company of New York; The Insurance Company of North America, of Philadelphia; The Hanover Fire Insurance Company of New York; National Fire Insurance Company of Hartford; Orient Insurance Company of Hartford; British American Insurance Company of New York; Manchester Assurance Company of Manchester, England; Sun Insurance Office of London; London & Lancashire Fire Insurance Company; Western Assurance Company of Toronto, and British America Assurance Company of Toronto, and each of them, appearing by Carr, Hewitt, Parker & Wright and James C.

Davis, their attorneys, and the defendant, Beryl F. Carroll,
52 auditor of the State of Iowa, appearing by Charles W. Mullan, attorney general of the State of Iowa, and the cause having been heretofore set down for hearing, at a former term of this honorable court, on the demurrer of said Beryl F. Carroll, auditor of the State of Iowa, to the original and amended bill of complaint, and the same having been fully argued by counsel for the complainants, as well as for the defendant, respectively, was taken under advisement by the court, and the court, now being fully advised in the premises, orders, decrees, and adjudges that the said demurrer be and the same is hereby overruled, and the defendant, Beryl F. Carroll, auditor of the State of Iowa, then and there by his counsel, in open court, having declined to further plead or answer to said original bill and amended bill of the complainants, and having elected to stand upon his said demurrer, and refusing to plead further, it is now ordered and decreed by the court that the complainants are entitled to the relief prayed for in said original and amended bill of complaint.

It is, therefore, ordered, considered, decreed, and adjudged by this court that the defendant, Beryl F. Carroll, auditor of the State of Iowa, and his successors in office be perpetually enjoined from enforcing as against the complainants, to-wit, The Greenwich Insurance Company of New York; The Insurance Company of North America; of Philadelphia; The Hanover Fire Insurance Company of New York; National Fire Insurance Company of Hartford; Orient Insurance Company of Hartford; British American Insurance Company of New York; Manchester Assurance Company of Manchester, England; Sun Insurance Office of London; London & Lancashire Fire Insurance Company; Western Assurance Company of Toronto, and British America Assurance Company of Toronto, and each of them, the provisions of sections 1754, 1755 and 1756 of the Code of Iowa of 1897, such sections
53 being sections 1, 2, and 3, of chapter 22 of the Acts of the 26th General Assembly; that the said Beryl F. Carroll, as auditor of the State of Iowa, and his successors in office, be and they are hereby enjoined from in any manner calling or bringing before them for examination under oath any officer, agent, or employé of any of the said complainants herein named, for any alleged violations of the provisions of said sections 1754, 1755, and 1756 of the Code of Iowa of 1897, and further that the said Beryl F. Carroll, as auditor of the State of Iowa, and his successors in office, be enjoined from entertaining any complaint made to them in writing, or otherwise, charging any of the complainants herein named with violation of section 1754 of the Code of Iowa of 1897, and that the said Beryl F. Carroll, as auditor of the State of Iowa, and his successors in office, be further enjoined and restrained from issuing any order revoking the authority of any of said companies for transacting business within the State of Iowa, or in any wise interfering with any such complainant company in doing business in the State of Iowa,

because of any alleged violation of the provisions of said section 1754 of the Code of Iowa of 1897.

It is further ordered, considered, and adjudged by the court that the said defendant, Beryl F. Carroll, as auditor of the State of Iowa, be required to pay the costs of this proceeding, taxed at $—, and that execution may issue therefor.

To which judgment, order and decree the said defendant, Beryl F. Carroll, as auditor of the State of Iowa, at the time duly excepted.

March 7th, 1904.

(S'g'd) SMITH McPHERSON, *Judge.*

54 The clerk will enter the above decree.

(S'g'd) SMITH McPHERSON, *Judge.*

(Endorsed:) The Greenwich Insurance Co., *at al.*, complainants, *vs.* Beryl F. Carroll, auditor of the State of Iowa, defendant. Decree. Filed March 7, 1904, E. R. Mason, clerk. T. 77.

55 And afterwards to-wit:—on the 21st day of April, 1904, there was filed in said clerk's office a petition for appeal to the Supreme Court of the United States, which petition is in words and figures following to-wit:

Petition for Appeal to the Supreme Court of the United States.

In the Circuit Court of the United States for the Southern District of Iowa.

THE GREENWICH INSURANCE COMPANY OF NEW YORK and Others, Complainants,
v.
BERYL F. CARROLL, Auditor of State of the State of Iowa, Defendant.

The above named defendant, conceiving himself aggrieved by the decree made and entered by the circuit court of the United States for the southern district of Iowa, on the seventh day of March, 1904, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith; and prays that this appeal may be allowed and that a transcript
56 of the record, proceedings and papers upon which such order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(S'g'd) CHAS. W. MULLAN,
Attorney General of Iowa, Attorney for Defendant.

Dated this nineteenth day of April, A. D. 1904.

The said appeal as prayed is allowed this April 25, 1904.
(S'g'd) SMITH McPHERSON, *Judge.*

57 And on the same day, to wit;—April 21 1904, there was filed in said clerk's office an assignment of errors, which assignment is in words and figures following, to-wit;—

Assignment of Errors on Appeal from the Circuit Court to the Supreme Court of the United States.

In the Circuit Court of the United States for the Southern District of Iowa.

THE GREENWICH INSURANCE COMPANY and Others, Complainants,
v.
BERYL F. CARROLL, Auditor of State of the State of Iowa, Defendant. } No. —.

The above named defendant prays an appeal from the final decree of this court to the Supreme Court of the United States, and assigns for error;

First. That the court erred in overruling the demurrer to complainant's bill, and in not dismissing the bill.

58 *Second.* The court erred in perpetually enjoining the defendant Beryl F. Carroll, auditor of state of the State of Iowa, and his successors in office, from enforcing against the complainants, and each of them, the provisions of sections 1754, 1755 and 1756 of the Code of Iowa, and in enjoining and restraining the said defendant, Beryl F. Carroll, auditor of state of the State of Iowa, and his successors in office, from in any manner calling or bringing before him or them for examination under oath any officer, agent or employee of said complainants, or either of them, for any alleged violation of the provisions of said sections 1754, 1755 and 1756 of the Code of Iowa.

Third. The court erred in enjoining and restraining the said Beryl F. Carroll, auditor of state of the State of Iowa, defendant herein, and his successors in office, from entertaining any complaint made to him or them, in writing or otherwise, charging any of the complainants with a violation of section 1754 of the Code of Iowa.

Fourth. The court erred in enjoining and restraining the said defendant, Beryl F. Carroll, auditor of state of the State of Iowa, and his successors in office, from issuing any order revoking the authority of any of the complainants for transacting the business of insurance within the State of Iowa, and from in anywise interfering with such complainants in doing business in the State of Iowa, because of any alleged violation of the provisions of said section 1754 of the Code of Iowa.

Fifth. The court erred in holding and adjudging that the provisions of sections 1754 and 1755 of the Code of Iowa violate and infringe the provisions of the constitution of the State of Iowa, and the provisions of section 6 of article I thereof, and in hold-
59 ing that said law is not uniform in its operation, and that thereby privileges and immunities are granted to citizens of the State of Iowa other than fire insurance companies transacting business therein, which are withheld from complainants.

Sixth. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe article XIV of the amendments to the Constitution of the United States, and deprive the complainants of liberty, property and property rights without due process of law, and deny to said complainants the equal protection of the laws of the State of Iowa.

Seventh. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe section 10 of article I of the Constitution of the United States, and impair the obligation of contracts.

Eighth. The court erred in holding that it had jurisdiction to hear and determine the questions presented by the bill, and to grant the relief asked therein.

Ninth. The court erred in assuming jurisdiction of the complainants and the defendant herein, and of the subject matter involved, when the constitutionality and validity of the State statute involved in this action had not been drawn into controversy in any action or proceeding whatever between the complainants and the defendant, and no personal or property rights of any kind or character were in anywise involved in any controversy existing between the complainants and the defendant.

Tenth. The court erred in adjudging that the defendant, Beryl F. Carroll, auditor of state of the State of Iowa, be required to pay the cost of this proceeding, and in entering judgment therefor and ordering execution to issue thereon.

60 Wherefore defendant prays that the decree of the said circuit court be reversed.

(S'g'd) CHAS. W. MULLAN,
Attorney General of Iowa, Attorney for Defendant.

(Endorsed:) U. S. circuit court, southern district of Iowa. The Greenwich Insurance Co. of New York, and others, complainants, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant. Petition for appeal and assignment of errors. Filed April 21, 1904. E. R. Mason, clerk. Chas. W. Mullan, attorney general of Iowa, att'y for def't.

61 And afterwards, to-wit;—on the 26th day of April, 1904, there was filed in said clerk's office an appeal bond, which bond is in words and figures following to-wit;—

62 *Appeal Bond.*

Know all men by these presents, That we, Beryl F. Carroll, as principal, and G. S. Gilbertson and D. J. Palmer as sureties, are held firmly bound unto the Greenwich Insurance Company of New York, The Insurance Company of North America, of Philadelphia, The Hanover Fire Insurance Company of New York, National Fire Insurance Company of Hartford, Orient Insurance Company of Hartford, British-American Insurance Company of New York, Manchester Assurance Company of Manchester, England, Sun Insurance Office of London, London & Lancashire Fire Insurance Company, Western Assurance Company of Toronto and British American Assurance Company of Toronto, in the full and just sum of two hundred and fifty dollars, to be paid to the said Greenwich Insurance Company of New York and the other obligees of this bond herein named, their certain attorneys, executors, administrators or assigns, to the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this twenty-second day of April A. D. in the year of our Lord one thousand nine hundred and four.

Whereas lately at a circuit court for the seventh day of March, A. D. 1904, in a suit depending in said court, between the said Greenwich Insurance Company of New York and the other obligees of this bond above named, as complainants, and Beryl F. Carroll, as defendant, a decree was rendered against the said *the said* Beryl F. Carroll, and the said Beryl F. Carroll having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Greenwich Insurance Company, of New York and the other obli-
63 gees of this bond, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the second Monday in October, A. D. 1904.

Now, the condition of the above obligation is such that if the said Beryl F. Carroll shall prosecute his appeal to effect and answer all damage and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(S'g'd) B. F. CARROLL, *Principal.*
G. S. GILBERTSON, *Surety.*
D. J. PALMER, *Surety.*

Sealed and delivered in the presence of

(S'g'd) WM. M. LEWIS.
Z. A. WILLIS.

The above and foregoing bond is approved this April 25th 1904.

(S'g'd) SMITH McPHERSON, *Judge.*

(Endorsed:) U. S. circuit court, southern district of Iowa. Greenwich Insurance Co. of New York, and others, complainants, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant Appeal bond. Filed April 26, 1904. E. R. Mason, clerk.

64 And afterwards, to-wit;—on the 6th day of May, 1904, there was filed in said clerk's office a citation, which citation is in words and figures, following, to-wit;—

65 *Citation.*

THE UNITED STATES OF AMERICA, ss:

The President of the United States to The Greenwich Insurance Company of New York, The Insurance Company of North America, of Philadelphia; The Hanover Fire Insurance Company of New York, National Fire Insurance Company of Hartford, Orient Insurance Company of Hartford, British-American Insurance Company of New York, Manchester Assurance Company of Manchester, England; Sun Insurance Office of London, London & Lancashire Fire Insurance Company, Western Assurance Company of Toronto, and British American Assurance Company of Toronto, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States at the city of Washington within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court for the southern district of Iowa, filed in the clerk's office of said court on the 21st day of April, A. D. 1904, in a case wherein Beryl F. Carroll is appellant and you are appellees, to show cause, if any, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, judge of the United States district court for the southern district of Iowa, sitting and acting as judge of the circuit court of the United States for the southern district of Iowa, this 25th day of April, A. D. 1904.

SMITH McPHERSON, *Judge.*

Service of a copy of the within and foregoing citation is hereby admitted this 26th day of April, A. D. 1904.

CARR, HEWITT, PARKER & WRIGHT.
JAMES C. DAVIS.

65½ [Endorsed:] U. S. circuit court, southern district of Iowa. Greenwich Insurance Co. of New York, and others, *v.* Beryl F. Carroll, auditor of state of the State of Iowa, defendant. Filed May 6, 1904 E. R. Mason, clerk. Citation.

66 And afterwards, to-wit, on the 24th day of May, 1904, there was filed in the clerk's office of said court for said district, the following order, which is in words and figures following, to-wit:

United States Circuit Court, Southern District of Iowa, Central Division.

GREENWICH INSURANCE COMPANY ET AL.
vs.
BERYL F. CARROLL, Auditor of the State of Iowa. } No. 2410. Equity.

It being made to appear to the court that it is impossible for the clerk to prepare the transcript within thirty days from the signing the citation under and by authority vested in me by rule 9 of the Supreme Court of the United States, it is hereby ordered that the time for making and preparing and filing in the Supreme Court of the United States a transcript in the above entitled cause be enlarged to the 22nd day of June, 1904.

(Signed) SMITH McPHERSON, *Judge.*

(Endorsed:) Filed May 24, 1904, E. R. Mason, clerk.

67 United States Circuit Court, Southern District of Iowa, Central Division.

I, Edward R. Mason, clerk of said court for said district, do hereby certify that the foregoing is a full, true and complete copy of the pleadings, proceedings and record entries, including the original citation with acceptance of service thereon, in a certain cause adjudicated in said court, wherein Greenwich Insurance Company *et al.*, were complainants and Beryl F. Carroll, auditor of the State of Iowa was respondent, as full, true and complete as the original of the same now remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Des Moines, in said district, this 9th day of June, A. D. 1904.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

Endorsed on cover: File No. 19,399. S. Iowa C. C. U. S. Term No. 299. Beryl F. Carroll, auditor of state of the State of Iowa, appellant, *vs.* The Greenwich Insurance Company of New York *et al.* Filed June 20", 1904. File No. 19,399.